

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: August 10, 1998

TO : F. Rozier Sharp, Regional Director
Region 17

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Carpenters District Council of Kansas
City and vicinity (Titan/Courtney Day)
Case 17-CC-1184

This case was submitted for advice as to whether the Union violated Section 8(b)(4)(i)(ii)(B) of the Act by instituting an area standards picket at a construction site on which the primary employer was the general contractor, but had only managerial employees present at the site, and where all other employees at the site were members of a union and were receiving area standards.

FACTS

The Union has an area standards dispute with Titan, a nonunion general contractor. Titan employees a regular crew of persons performing carpentry work. The Union has known for some time that Titan employees earn less in wages and benefits than the scale set forth in the Union's area agreements with the Builders' Association. On the basis of that information, the Union has been picketing various other Titan projects in the area at which Titan does maintain an employee complement.

In November 1997, Titan, in a joint venture with Courtney Day Construction, bid to be general contractors for an upcoming project at the UMB Bank Technology and Operations Center. Titan/Courtney Day was awarded the bid and began construction in December of 1997. The Bank required that all labor performed on the project be performed by union members. Titan/Courtney Day has complied with this requirement by hiring all union subcontractors to perform the work on the jobsite. Titan/Courtney Day employs only seven managerial employees on the UMB jobsite. Titan/Courtney Day employs no statutory employees at the UMB jobsite.

On July 21, the Union established an area standards picket at the UMB jobsite. The employees of the subcontractors refused to cross the picket line and the job was shut down that day. That afternoon, Titan/Courtney Day established a reserve gate system and communicated that to the Union by letter dated July 21. Gate 1 was for the use of the subcontractors and gate 2 was reserved for the managerial employees and the suppliers of Titan/Courtney Day.

On July 24 picketing resumed. The Union picketed back and forth between the two gates for approximately two hours on that day. The subcontractors' employees refused to enter the jobsite and the job was shut down. There has been no picketing by the Union at the UMB jobsite since July 24.

ACTION

Complaint should issue, absent settlement, alleging that the Union violated 8(b)(4)(i)(ii)(B) of the Act by picketing the Employer at the UMB jobsite which was not a situs of the Union's area standards dispute because the Employer did not employ any statutory employees on that job, and the employees of the Employer's subcontractors were all unionized, and thus paid area standards wages.

The Board has held that "[t]he Moore Dry Dock and other common situs cases make it clear that picketing affecting in any manner the employees of secondary employers can be considered primary only where as a condition precedent, the secondary employer is harboring the situs of a dispute between the union and the primary employer."¹ If a primary is doing business on premises which are also occupied by a neutral, the union is not free to picket unless it conducts its picketing in such a way as to minimize its impact on neutrals. Thus, a union picketing at a common situs must, inter alia, strictly limit its picketing to times when the **situs of the dispute** is located on the secondary employer's premises and to times when the primary employer is engaged in its normal

¹ Associated Musicians of Greater New York (Gotham Broadcasting Corp.), 110 NLRB 2166, 2168 (1954), enfd. 226 F.2d 900 (2d Cir. 1955).

business at the situs.² Thus, one must distinguish between the presence of the primary employer and the presence of the primary dispute and both requirements must be met, because the presence of the primary's employees is not sufficient to establish the presence of the primary dispute if those employees are not employed in the unit with which the union has a dispute. In Gotham, supra, for example, the Board held that the union violated Section 8(b)(4) of the Act when it picketed a site where the employees involved in the dispute were not present, even though the employer did provide an engineer and equipment at the picketed site.

In the instant case, the Union has an area standards dispute with the Employer; however, the Employer does not have its own carpenters at the UMB site since it has subcontracted that work to unionized employers. Thus, we agree with the Region that the **situs of the dispute** is not at the UMB site despite the fact that the Employer has certain managerial employees there.³ Since the Union picketed at a location which was not the situs of the dispute, an inference can be made that the Union intended to and in fact did enmesh neutral employees in its dispute with the Employer.

Accordingly, complaint should issue, absent settlement, alleging that the Union violated Section 8(b)(4)(i)(ii)(B) of the Act by picketing at the UMB jobsite.

² Sailors' Union of the Pacific (Moore Dry Dock Co.), 92 NLRB 547, 549 (1950).

³ We agree with the Region that cases cited by the Union are distinguishable in that there was a reasonable expectation that employees of the primary would come onto the site, even though they may not have been present all the time. Steelworkers Local 6991 (Auburndale Freezer Corp.), 177 NLRB 791 (1969) and Local 25 IBEW (Eugene Iovine, Inc.), 201 NLRB 531 (1973).

B.J.K.